

Claimant testified that he injured his shoulder while working for respondent. The injury occurred when he caught a patient who was starting to fall. Claimant originally

alleged that the injury occurred on October 23, 1997. At the time of the hearing he changed the date of accident to October 9, 1997. Claimant also testified that he reported the incident and an incident report was filled out on the day it occurred.

Claimant received treatment for his shoulder from Ronald J. Burt, M.D., a family physician, from October 17, 1997, to February 16, 1998. Claimant testified that he saw Steven M. Ramberg, M.D., before seeing Dr. Burt, but Dr. Ramberg's records were not introduced into evidence. Dr. Burt's records do not contain any history of on-the-job injuries. Claimant was referred to Kenneth L. Wertzberger, M.D. Dr. Wertzberger's records show an increase of pain since October 1997 with a history of a fall in 1994. The record does not specifically mention an injury at work in October of 1997 or an injury while working for respondent.

Finally, respondent has produced evidence indicating that they could not locate any report of incident and further indicating that they did not have notice of an injury until after the surgery had been performed.

Claimant was unrepresented at the preliminary hearing and had some difficulty presenting his version of the events. Upon a more detailed examination by the ALJ, the ALJ concluded that claimant was telling the truth when he testified that he was injured at work. Claimant gave credible detail about the accident. Further, he gave credible detail about reporting the injury and about the incident report being completed by the head nurse at the south unit.

Claimant admits that he did not report the injury to Dr. Burt. When asked why Dr. Wertzberger's records refer to a 1994 incident, claimant testified that the incident had occurred and Dr. Wertzberger had asked about a prior incident. Claimant stated he thought Dr. Wertzberger was asking about before the current injury.

Claimant's father also testified on his behalf and generally confirmed claimant's version of the events. Claimant resided with his family at the time of the incident and claimant's father suggested that they had not intended to make this claim until the expenses had become too great for the family to pay.

The credibility of the claimant is the key issue. The Board generally defers to the evaluation of credibility by the ALJ when the witness has appeared before the ALJ. In this case, the ALJ went to some length to examine the claimant to determine that credibility. He ultimately concluded that claimant was giving an accurate version of the events. For that reason, and in spite of some evidence to the contrary, the Appeals Board concludes the decision by the ALJ should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order for Compensation entered by Administrative Law Judge Brad E. Avery on January 5, 1999, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1999.

---

BOARD MEMBER

c: Michael Anthony Mattern, Lawrence, KS  
Jeff K. Cooper, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director